

2001 Senate Bill 360

Date of enactment: **April 15, 2002**  
Date of publication\*: **April 29, 2002**

## 2001 WISCONSIN ACT 75

AN ACT *to repeal* 134.66 (2) (d) and 254.916 (4); *to amend* 134.66 (2) (b) 2., 134.66 (3) (intro.), 134.66 (4) (a) 1., 134.66 (5), subchapter IX (title) of chapter 254 [precedes 254.911], 254.911 (2), 254.916 (1) (b), 254.916 (1) (c), 254.916 (3) (e), 254.916 (3) (f) (intro.), 254.916 (5), 254.916 (8) and 254.916 (11); *to repeal and recreate* 254.916 (title) and 254.916 (1) (a); and *to create* 134.65 (1m), 134.66 (2m), 254.92 (4) and 778.25 (1) (a) 4. of the statutes; **relating to:** investigations to determine compliance with certain prohibitions against selling or giving cigarettes and tobacco products to minors, requiring retailers to provide training to their employees on compliance with those prohibitions, authorizing counties and municipalities to enact ordinances prohibiting minors from purchasing or possessing cigarettes and tobacco products, requiring certain information to be included on an application for a license to sell, expose for sale, possess with intent to sell, exchange, barter, dispose of, or give cigarettes or tobacco products to a person, and providing an exemption from rule-making procedures.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 134.65 (1m) of the statutes is created to read:

134.65 (1m) A city, village, or town clerk may not issue a license under sub. (1) unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over the counter or in a vending machine, or both.

**SECTION 2.** 134.66 (2) (b) 2. of the statutes is amended to read:

134.66 (2) (b) 2. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$25 ~~\$50~~.

**SECTION 3.** 134.66 (2) (d) of the statutes is repealed.

**SECTION 4.** 134.66 (2m) of the statutes is created to read:

134.66 (2m) TRAINING. (a) Except as provided in par. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation of sub. (2) (a) or (am). The department of health and family services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health and family services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent,

\* Section 991.11, WISCONSIN STATUTES 1999-00 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

employee, or independent contractor shall sign a form provided by the department of health and family services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

(b) Paragraph (a) does not apply to an agent, employee, or independent contractor who has received the training described in par. (a) as part of a responsible beverage server training course or a comparable training course, as described in s. 125.04 (5) (a) 5., that was successfully completed by the agent, employee, or independent contractor. The department of health and family services shall make the training program developed or approved by that department under par. (a) available to the technical college system board, and that board shall include that training program or a comparable training program approved by that department in the curriculum guidelines specified by that board under s. 125.04 (5) (a) 5. The department of health and family services shall also make the training program developed or approved by that department under par. (a) available to any provider of a comparable training course, as described in s. 125.04 (5) (a) 5., on request, and the department of revenue or the educational approval board may approve a comparable training course under s. 125.04 (5) (a) 5. only if that training course includes the training program developed or approved by the department of health and family services under par. (a) or a comparable training program approved by that department.

(c) If an agent, employee, or independent contractor who has not received the training described in par. (a) commits a violation of sub. (2) (a) or (am), a governmental regulatory authority, as defined in s. 254.911 (2), may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee, or independent contractor and not to the agent, employee, or independent contractor who has not received that training. If an agent, employee, or independent contractor who has received the training described in par. (a) commits a violation of sub. (2) (a) or (am) for which a governmental regulatory authority issues a citation to the retailer that hired or contracted with the agent, employee, or independent contractor, the governmental regulatory authority shall also issue a citation based on that violation to the agent, employee, or independent contractor who has received that training.

**SECTION 5.** 134.66 (3) (intro.) of the statutes is amended to read:

134.66 (3) ~~DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR; SALE TO MINOR.~~ (intro.) Proof of all of the following facts by a retailer, manufacturer ~~or~~ distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco

products to a person under the age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

**SECTION 6.** 134.66 (4) (a) 1. of the statutes is amended to read:

134.66 (4) (a) 1. In this paragraph, “violation” means a violation of sub. (2) (a), (am), (cm), ~~(d)~~ or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am), (cm), ~~(d)~~ or (e).

**SECTION 7.** 134.66 (5) of the statutes is amended to read:

134.66 (5) A county, town, village, or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this subsection does not apply within any town, village, or city that has adopted or adopts an ordinance under this subsection. If a county, town, village, or city conducts unannounced investigations of retail outlets, as defined in s. 254.911 (5), to determine compliance with an ordinance adopted under this subsection, as authorized under s. 254.916 (1), the investigations shall meet the requirements of s. 254.916 (3) (a) to (f) and any standards established by the department of health and family services under s. 254.916 (1) (b).

**SECTION 8.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the statutes is amended to read:

#### CHAPTER 254

##### SUBCHAPTER IX

#### INVESTIGATIONS OF THE SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS

**SECTION 9.** 254.911 (2) of the statutes is amended to read:

254.911 (2) “Governmental regulatory authority” means the department; ~~the~~ a local health department, a state agency, or a state or local law enforcement agency ~~with which the department contracts under s. 254.916 (4) (a); or the~~ a person with whom the local health department, state agency, or state or local law enforcement agency contracts to conduct investigations authorized under s. 254.916 (1) (a).

**SECTION 10.** 254.916 (title) of the statutes is repealed and recreated to read:

#### **254.916 (title) Investigations.**

**SECTION 11.** 254.916 (1) (a) of the statutes is repealed and recreated to read:

254.916 (1) (a) A governmental regulatory authority may conduct unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance adopted under s. 134.66 (5). The department may contract with a local health department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person

to conduct those investigations. A person who contracts to conduct investigations authorized under this section shall agree in the contract to train all individuals conducting investigations under the contract in accordance with the standards established under par. (b) and to suspend from conducting any further investigations for not less than 6 months any individual who fails to meet the requirements of sub. (3) (a) to (f) and the standards established by the department.

**SECTION 12.** 254.916 (1) (b) of the statutes is amended to read:

254.916 (1) (b) The department, in consultation with ~~retailers and other~~ governmental regulatory authorities and with retailers, shall establish standards for procedures and training for conducting investigations under this section.

**SECTION 13.** 254.916 (1) (c) of the statutes is amended to read:

254.916 (1) (c) No retailer may be ~~subject to unannounced investigations~~ subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or (am), or a local ordinance adopted under s. 134.66 (5), during each the most recent investigation.

**SECTION 14.** 254.916 (3) (e) of the statutes is amended to read:

254.916 (3) (e) A governmental regulatory authority shall make a good faith effort to make known to the retailer or the retailer's employee or agent, within 72 hours after the occurrence of the violation, the results of an investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during the conduct of the investigation. This paragraph does not apply to investigations conducted under a grant received under ~~42 USC 300x-021~~ 42 USC 300x-21.

**SECTION 15.** 254.916 (3) (f) (intro.) of the statutes is amended to read:

254.916 (3) (f) (intro.) Except with respect to investigations conducted under ~~42 USC 300x-021 or 21 CFR part 897~~ a grant received under 42 USC 300x-21, all of the following information shall be reported to the retailer within 10 days after the conduct of an investigation under this section:

**SECTION 16.** 254.916 (4) of the statutes is repealed.

**SECTION 17.** 254.916 (5) of the statutes is amended to read:

254.916 (5) No evidence obtained during or otherwise arising from the course of an investigation under this section that is used to prosecute a person for a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5) may be used in the prosecution of an alleged violation of s. 125.07 (3).

**SECTION 18.** 254.916 (8) of the statutes is amended to read:

254.916 (8) A governmental regulatory agency that conducts an investigation under this section shall meet the requirements of sub. (3) (a) to (f) and the standards established by the department of health and family services. ~~The department shall annually evaluate the investigation program of each governmental regulatory authority. If, at any time, a governmental regulatory authority fails to meet the standards, the department of health and family services may terminate the contract under sub. (1).~~

**SECTION 18g.** 254.916 (11) of the statutes is amended to read:

254.916 (11) ~~The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging that the A person making~~ conducting an investigation of the appellant has under this section may not have a financial interest in a regulated cigarette and tobacco product retailer, a tobacco vending machine operator, a tobacco vending machine premises ~~or~~ or a tobacco vending machine that may interfere with his or her ability to properly ~~take that action~~ conduct that investigation. A person who is investigated under this section may request the local health department or local law enforcement agency that contracted for the investigation to conduct a review under ch. 68 to determine whether the person conducting the investigation is in compliance with this subsection or, if applicable, may request the state agency or state law enforcement agency that contracted for the investigation to conduct a contested case hearing under ch. 227 to make that determination. The results of an investigation that is conducted by a person who is not in compliance with this subsection may not be used to prosecute a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5).

**SECTION 19.** 254.92 (4) of the statutes is created to read:

254.92 (4) A county, town, village, or city may enact an ordinance regulating the conduct regulated by this section only if the ordinance strictly conforms to this section. A county ordinance enacted under this subsection does not apply within a town, village, or city that has enacted or enacts an ordinance under this subsection.

**SECTION 20.** 778.25 (1) (a) 4. of the statutes is created to read:

778.25 (1) (a) 4. Under s. 254.92 or under a local ordinance strictly conforming to s. 254.92 brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.

**SECTION 21. Nonstatutory provisions.**

(1) COMPLIANCE TRAINING PROGRAM DEVELOPMENT. By the first day of the 3rd month beginning after the effective date of this subsection, the department of health and family services shall develop or approve the training program, and shall develop the form, required under sec-

tion 134.66 (2m) (a) of the statutes, as created by this act. Notwithstanding section 227.10 (1) of the statutes, the department of health and family services is not required to promulgate that training program or form as rules.

(2) TRAINING OF CURRENT EMPLOYEES. Notwithstanding section 134.66 (2m) (a) of the statutes, as created by this act, no later than the first day of the 2nd month beginning after the effective date of this subsection a retailer, as defined in section 134.66 (1) (g) of the statutes, shall provide the training described in section 134.66 (2m) (a) of the statutes, as created by this act, to all individuals who were agents, employees, or independent contractors of the retailer on the day before the effective date of this subsection.

**SECTION 22. Initial applicability.**

(1) COMPLIANCE INVESTIGATION CONTRACTS. The treatment of section 254.916 (1) (a) (with respect to compliance investigation contracts) of the statutes first applies to a compliance investigation contract that is entered into or extended, modified, or renewed on the effective date of this subsection.

**SECTION 23. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) COMPLIANCE TRAINING REQUIREMENT. The treatment of section 134.66 (2m) of the statutes and SECTION 21 (2) of this act take effect on the first day of the 3rd month beginning after publication.

